IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 461 OF 2000

Pralhad Gangaram Dhongade, aged about 32 years,]
Occ. Service, Resident of B/5/14, Upper Indira Nagar,]
Bibvewadi, Pune (At present in Yerawada Central Prison).] .. Appellant

Versus

The State of Maharashtra,] .. Respondents

Mrs. Revati Mohite-Dere for the appellant/accused.

Mrs. P.H. Kantharia, A.P.P., for the State.

CORAM: V.G. PALSHIKAR &
ANOOP V. MOHTA, JJ.

DATED: 16TH SEPTEMBER, 2004.

ORAL JUDGMENT: *[Per Anoop V. Mohta, J.]*

1. The appellant-accused, a skilled mechanic worker, killed the deceased Rajendra Palande, a Sectional Manager working with Bajaj Auto

Limited, Akurdi, Pune, because the deceased had made various complaints against the accused to the superiors and recommended strict disciplinary action also. This is the case of the prosecution in the present case, based on which, the learned Additional Sessions Judge, Pune, by the impugned judgment dated 21st March, 2000, has convicted the appellant under Section 302 of the IPC and sentenced him to undergo rigorous imprisonment for life and passed other related orders. Therefore, this Appeal against the order of conviction.

2. The deceased made a complaint and also recommended strict disciplinary action against the accused to the superior on 22/12/1996 as he was found sleeping on the shop floor during the lunch hour. Again on 27/12/1996, the deceased made a report against the accused. On 28/12/1996 PW6 – Dayanand Choisram Rajpal summoned the accused and sought his explanation. The accused, therefore, got annoyed and abused the deceased Palande and told PW6 that deceased' s days are numbered and accordingly, expressed his anguish and threatened to death of the deceased and his family members. On the same day, at about 6.45 p.m., the deceased was working on a welding machine as he was working in the three wheeler chassis Section. Suddenly, as alleged, accused poured thinner on the back of the deceased and ran away from the Chassis Section. The deceased, because of the sparks from the machine,

caught fire. He, immediately, therefore, turned around and saw the accused running away from the spot. The deceased shouted for help. Some other workers extinguished the fire. He was then admitted to the dispensary of the company and thereafter taken to Sassoon Hospital for a while. He was thereafter shifted to Ruby Hall Clinic for further treatment. The Special Judicial Magistrate – PW7 Ulhas Dattatraya Koranne recorded the dying declaration (Exhibit-30) of the deceased at 11.15 p.m. PW14 – Surendra Vaijanath Jadhav recorded the complaint/FIR of the deceased Rajendra Palande on 29/12/1996 and initially an offence under Section 307 of the IPC was registered against the accused. The Investigating Officer PW13 – Vilas Balasaheb Raskar, then visited the place of the offence and drew the Panchanama of the scene of offence (Exhibit-21). In Panchanama they seized cotton waste, half burnt pieces of cloth and other articles. A sample of thinner was also collected from the Paint Shop and the accused was arrested on the same day. A bottle of thinner was also recovered at the instance of the accused on 29/12/1996 (Exhibit-39). An empty bottle of thinner was also recovered at the instance of the accused from the locker No.5342/0331 (Exhibit-40). On 4th January, 1997, the deceased Palande succumbed to the injuries. This aspect is also deposed by PW13 PSI Vilas Raskar, apart from Memorandum of the accused readiness to point out the same (Exhibits-39 & 40). It was duly proved by the Panch witness PW11 – Ashok

Vishnu Joshi. Merely because prosecution failed to establish the allotment of the said locker to the accused by the company, the accused' sown statement, as well as, the other evidence cannot be overlooked. PW13 – PSI Vilas Balasaheb Raskar sent all the attached articles to the Chemical Analyzer for analysis along with the requisition. The deceased had 54% burn injuries and the cause of death was due to septicemic shock following burns. After preparation of the final report under Section 173 of the Criminal Procedure Code, the case was committed to the Court of Sessions on 26th March, 1997. The appellant was arrested on 31st December, 1996. The charges were framed under Section 302 of the IPC. The accused pleaded “not guilty” and total denial was the defence.

3. The prosecution examined 16 witnesses. The learned Additional Sessions Judge held that Rajendra Palande, the deceased, died a homicidal death. He further held that the prosecution proved that on 28th December, 1996, at about 6.45 p.m. in the premises of Bajaj Auto in its Three Wheeler Chassis Section, the accused committed the murder and, by intention, or knowingly, caused the death of the complainant Rajendra Palande by pouring chemicals on his person. Therefore, the accused was convicted and sentenced to rigorous imprisonment for life.

4. We have heard the Advocates for the parties. After hearing the arguments of the parties, based on the grounds of appeal and defence, as raised, we are of the view that the impugned judgment needs no interference. The point-wise reasoning is within the framework of law, as well as, the record. There is no perversity and/or even other possible views. The prosecution, according to us also, proved their case. We have re-appreciated and re-weighed the testimony/evidence placed on the record and we decline to interfere with the order of conviction, as well as, the sentence. There is no eye witness in the present matter. The whole conviction is based on the circumstantial evidence and corroborative evidence, including the medical evidence.

5. The dying declaration (Exhibit-30) was recorded by the Special Judicial Magistrate PW7- Ulhas Dattatraya Koranne, immediately after the incident on 28th December, 1996. The deceased Palande in his FIR dated 29th December, 1996, named the accused even though in the dying declaration dated 28th December, 1996, there was no mention about his action. In this FIR, however, he ascribed the act of pouring thinner to the accused. PW9 - Dr. Vrushali Prataprao Patil, who was, at the relevant time, attached to Ruby Hall Clinic supported the history of the patient and the injuries. The said history was also disclosed to her by PW8 – Dinkar Godhaji Agare. PW10 – Dr. Atul

Shashikant Ambole, who was attached to Ruby Hall Clinic at the relevant time and in whose presence the dying declaration was recorded by the Special Judicial Magistrate PW7, also supports the prosecution's case. Dr. Gayatri Shriram Kulkarni attached to Sassoon Hospital and who had conducted the Post Mortem on 4th January, 1997, also remained undisturbed. PW14 – Surendra Vaijanath Jadhav who recorded the statement of the deceased on the basis of which the offence came to be registered on 29th December, 1996, further supports the prosecution' scase. The wife of the deceased PW5 - Deepmala Rajendra Palande has deposed that the deceased informed her that the appellant-accused had committed the said offence. Except PW2 and PW3, who turned hostile, the rest of the witnesses and their testimony supports the case of the prosecution. In addition to that, oral evidence and other documentary evidence, as relied by the prosecution and which are duly proved are the Inquest Panchanama (Exhibit-14), Seizure Panchanama (Exhibit-16), Spot Panchanama (Exhibit-20), Complaint (Exhibit-24 and Exhibit-25), apology tendered by the accused (Exhibit-26), dying declaration (Exhibit-30), Chemical Analyzer' sReport (Exhibits-53 & 54), and FIR (Exhibit-57). The cumulative effect of all this oral, as well as, the documentary evidence is sufficient to maintain the order of conviction.

6. As noted above, it cannot be said that there was no motive of the accused at all of throwing or pouring thinner on the back of the deceased in the Chassis Section where welding work was going on. It has come on the record that in the said Section, the thinner was not at all necessary or essential for any purposes. Everybody knows the effect and consequences of putting or pouring such thinner on any person or anybody where welding work is going on. The complaint, as well as, recommendation of strict disciplinary action against the accused and thereafter related threat to the deceased and his family including the express of anguish in the presence of PW6 on 28th December, 1996, cannot be overlooked. In this background, the intentional act of the accused of pouring or throwing the thinner on the body of the deceased which caught fire and resulted into 54% burn injuries and later on, on 4th January, 1997, the deceased succumbed to the same. Therefore, merely because the death occurred after 6-7 days, that itself cannot be the reason to give or grant any benefit to the accused. As opined by Dr. Gayatri Kulkarni, the burn injuries, as caused, itself were sufficient to cause death. Those injuries, which are duly proved, were because of this incident and leaves no doubt that the accused had knowingly and intentionally poured the thinner and committed the said offence.

7. The deceased's complaint/FIR, as deposed and supported by the

testimony of PW7 – Ulhas, PW5 – Deepmala, wherein it is amply proved that the accused had poured thinner from the rear and because of the sparks of the welding, he caught fire. PW5 – Deepmala, the wife, also in her evidence deposed that the deceased informed about the appellant's above role. She further deposed that this incident was narrated to her before the arrival of the Police in Ruby Hall Clinic. Nothing could shatter her evidence. PW6 - Dayanand also deposed that on his inquiry, deceased told him that the appellant, as threatened, poured the thinner and as deceased smelt and turned around, he saw the accused running from the Section. This witness further deposed that the wife of the appellant was present in the room where the deceased was admitted. This witness further deposed that the accused tendered the written apology which is Exhibit-26. Merely because this Officer failed to report the threat given by the accused to the complainant on 28th December, 1996, to the superiors, that by itself cannot be the reason to overlook the remaining testimony of this witness. PW8 – Dinkar also supports the case of the prosecution as complained by the deceased also including the role played by the accused. This witness further endorsed that the deceased told him during recess that the accused threatened him. This witness had, in fact, assisted to shift the deceased to Ruby Hall Clinic. The accident dated 28th December, 1996, was the subject matter of departmental enquiry against the accused on the similar lines. This witness also supports the

presence of the Magistrate and the sound and conscious state of mind of the deceased. PW10 - Dr. Atul also supports that the patient was in a fit condition to make a statement. A person having 54% burn injuries may survive or he may die. According to him, the injuries were sufficient, in the ordinary course of nature, for a person to die.

8. Considering the recovery of an empty bottle of thinner, at the instance of the accused, the smell of thinner on the spot, the burnt clothes of the deceased, the complaint, the FIR lodged by the deceased, the dying declaration of the deceased, the medical report, as well as, the medical evidence of the injuries which resulted into the death of the deceased, apart from the motive, as referred above, according to us also, sufficient material has been placed by the prosecution on the record to link the circumstances which lead to only one conclusion that the accused had undoubtedly committed this crime. Merely because there are no eye witnesses and two witnesses PW2 – Parte and PW3 – Pawar who were working near the adjoining welding machines, turned hostile, that itself cannot be the reason to overlook the duly proved dying declaration and the statements and the deposition/testimony of the concerned and related witnesses of the prosecution. It is settled that conviction is possible even on the basis of duly proved and valid dying declaration. In the present case, there are

circumstances in support of the evidence, which is also corroborated by the medical evidence. The dying declaration is reliable, independent, immediate and prompt version of the incident by the deceased. There is no inconsistency in the FIR and/or the dying declaration and/or even the evidence of the witnesses. The cumulative effect of this shows the guilty mind and the guilt of the accused.

9. In view of the reasoning given by the Additional Sessions Judge, as well as, the above finding, we are of the view that this is not a case of accidental death. The appellant has committed the charged crime. There are no mitigating circumstances or material on the record to reduce the sentence as imposed. As noted above, the accused took revenge by pouring highly inflammable chemical on the deceased merely because the superior Officer (deceased) complaint and/or recommended strict departmental action against his subordinate (accused). This is, in a way, quite shocking and disturbing. The offence was committed with full knowledge of the consequences. In view of this, we are not interfering even with the punishment, as imposed.

10. There is no merit in the Appeal. The Appeal is, therefore, dismissed.

[V.G. PALSHIKAR, J.]

[ANOOP V. MOHTA, J.]